

1 Paul R. Fine, State Bar No. 53514  
Bernadette C. Brouses, State Bar No. 232812  
2 DANIELS, FINE, ISRAEL,  
SCHONBUCH & LEBOVITS, LLP  
1801 CENTURY PARK EAST, NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
3 TELEPHONE (310) 556-7900  
FACSIMILE (310) 556-2807  
FINE@DFIS-LAW.COM  
4 BROUSES@DFIS-LAW.COM

5 Gary Stein (admitted *pro hac vice*)  
Brian T. Kohn (admitted *pro hac vice*)  
6 SCHULTE ROTH & ZABEL LLP  
919 THIRD AVENUE  
NEW YORK, NEW YORK 10022  
7 TELEPHONE (212) 756-2000  
FACSIMILE (212) 593-5955  
GARY.STEIN@SRZ.COM  
8 BRIAN.KOHN@SRZ.COM

Attorneys for Defendant Robert Weinstein

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 DOMINIQUE HUETT,

13 Plaintiff,

14 vs.

15 THE WEINSTEIN COMPANY LLC,  
16 BOB WEINSTEIN AND HARVEY  
WEINSTEIN,

17 Defendants.  
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Case No. 2:18-cv-06012-SVW-MRW

**DEFENDANT ROBERT  
WEINSTEIN'S NOTICE OF  
MOTION AND MOTION TO  
TRANSFER VENUE; AND  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

[28 U.S.C. § 1404]

Hon. Stephen V. Wilson

**Hearing**

Date: October 15, 2018

Time: 1:30 p.m.

Courtroom: 10A

**TO THE HONORABLE UNITED STATES DISTRICT JUDGE  
WILSON, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD  
HEREIN:**

Mr. Weinstein's Motion is made on the following grounds:

This Motion is made following several telephone conferences between Mr. Weinstein's counsel and Plaintiff's counsel pursuant to Local Rule 7-3, the latest of which took place on August 3, 2018.

Date: September 14, 2018

By:

Paul R. Fine

SCHULTE ROTH & ZABEL LLP

Attorneys For Defendant Robert Weinstein

DANIELS, FINE, ISRAEL, SCHONBUCH & LEBOVITS, LLP  
 1801 CENTURY PARK EAST, NINTH FLOOR  
 LOS ANGELES, CALIFORNIA 90067  
 TELEPHONE (310) 556-7900  
 FACSIMILE (310) 556-2807

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This action—asserting an array of claims under a federal statute penalizing commercial sex trafficking (and a single common law negligence claim against one Defendant)—was brought by a New York resident, plaintiff Dominique Huett (“Plaintiff”), against a New York-based company and its two-founders, also alleged to be New York residents. Given that all parties are domiciled in New York, the convenience of the parties and witnesses, as well as the interests of justice, all would be best served by transferring it to the Southern District of New York (“S.D.N.Y.”).

Indeed, the same Florida-based counsel that brought this action previously filed a nearly identical action, asserting the same causes of action for alleged sex trafficking on behalf of a different plaintiff in the S.D.N.Y. against all three Defendants in this action—Harvey Weinstein, The Weinstein Company (“TWC”), and Mr. Weinstein. In that action, pending before Judge Robert W. Sweet, the Court already has ruled on motions to dismiss filed by Mr. Weinstein and Harvey Weinstein.

To be sure, Plaintiff’s First Amended Complaint (the “Complaint”) does allege that Plaintiff was assaulted by Harvey Weinstein in a Beverly Hills hotel. But that is literally the only connection between this dispute and California. Even the non-party witnesses in the action are likely to be in New York given that New York is where TWC was headquartered.

In sum, because (i) all parties and likely all witnesses are domiciled in New York, and (ii) Judge Sweet already has analyzed virtually identical allegations and claims against the same Defendants, transfer under 28 U.S.C. § 1404(a) to the S.D.N.Y. would both serve the convenience of the parties and promote judicial economy.

DANIELS, FINE, ISRAEL, SCHONBUCH & LEBOVITS, LLP  
 1801 CENTURY PARK EAST, NINTH FLOOR  
 LOS ANGELES, CALIFORNIA 90067  
 TELEPHONE (310) 556-7900  
 FACSIMILE (310) 556-2807

## II. RELEVANT FACTS

The Complaint alleges that Plaintiff, as well as Defendants Harvey Weinstein and Mr. Weinstein, are New York residents [Compl. ¶¶ 1, 3, 4], and that TWC is a Delaware limited liability company with its principal place of business in New York [*Id.* ¶ 2]. The Complaint describes a single interaction between Plaintiff and Harvey Weinstein in a Beverly Hills hotel in November 2010. [*Id.* ¶ 11.] However, beyond that alleged assault, the Complaint offers no other factual allegations in any way relating to California.

Less than a month after this case was initially filed in state court, Plaintiff's counsel, who are based in Florida, filed an action in the S.D.N.Y. on behalf of another individual, Kadian Noble, against Mr. Weinstein, as well as TWC, Weinstein Company Holdings, LLC, and Harvey Weinstein. That action, captioned *Noble v. Harvey Weinstein*, No. 1:17-cv-09260-RWS, and pending before Judge Sweet, asserted the very same claims under the Trafficking Victims Protection Act (the "TVPA")—based on the very same theories—that Ms. Huett has asserted here.

On August 14, 2018, Judge Sweet issued his decision granting Mr. Weinstein's motion to dismiss for failure to state a claim and denying Harvey Weinstein's motion to dismiss. *See Noble v. Weinstein*, No. 17 Civ. 9260-RWS, 2018 WL 3863452, at \*12-15 (S.D.N.Y. Aug. 14, 2018) (finding complaint's allegations—virtually identical to those pleaded here—insufficient to support claims against Mr. Weinstein for participating in a sex trafficking venture and aiding and abetting commercial sex acts).<sup>1</sup>

<sup>1</sup> TWC and Weinstein Company Holdings, LLC remain subject to an automatic stay in connection with TWC's bankruptcy proceedings and, therefore, have not yet responded to the complaint.

### 1 **III. LEGAL ARGUMENT**

#### 2 **A. THIS ACTION SHOULD BE TRANSFERRED TO THE** 3 **SOUTHERN DISTRICT OF NEW YORK.**

4 This Court should transfer this action under 28 U.S.C. § 1404(a) to the  
 5 S.D.N.Y., where (i) all parties are alleged in the Complaint to reside, and (ii) Judge  
 6 Sweet is presiding over the virtually identical *Noble* action, which was brought by  
 7 Plaintiff's counsel against the same Defendants named here.

8 A district court may "[f]or the convenience of parties and witnesses, in the  
 9 interest of justice, ... transfer any civil action to any other district or division where  
 10 it might have been brought." 28 U.S.C. § 1404(a). In considering a motion to  
 11 transfer under §1404(a), the Court must first make a threshold determination of  
 12 whether the action initially could have been brought in the proposed transferee  
 13 court. *See, e.g., Luna v. Wal-Mart Transp. LLC*, No. EDCV 18-331 PSG (KKx),  
 14 2018 WL 3569357, at \*2 (C.D. Cal. July 11, 2018). Once this threshold question is  
 15 answered in the affirmative, the Court then must analyze whether the convenience  
 16 of the parties and witnesses, and the interests of justice, weigh in favor of transfer.  
 17 *See id.* at \*2-5; *see also Mardones v. Lauper*, No. CV 17-6440 PA (FFMx), 2018  
 18 WL 1363488, at \*2-4 (C.D. Cal. Feb. 23, 2018). Courts in the Ninth Circuit may  
 19 weigh any of the following factors in deciding whether to transfer an action:

20 (1) the location where the relevant agreements were  
 21 negotiated and executed, (2) the state that is most  
 22 familiar with the governing law, (3) the plaintiff's choice  
 23 of forum, (4) the respective parties' contacts with the  
 24 forum, (5) the contacts relating to the plaintiff's cause of  
 25 action in the chosen forum, (6) the differences in  
 26 the costs of litigation in the two forums, (7) the  
 27 availability of compulsory process to compel attendance  
 28 of unwilling non-party witnesses, and (8) the ease of  
 access to sources of proof.



1 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).<sup>2</sup> As set forth  
 2 below, this action properly could have been filed in the S.D.N.Y., and consideration  
 3 of the relevant factors strongly weighs in favor of transferring this action there.

4 **1. This Action Properly Could Have Been Brought in the**  
 5 **Southern District of New York.**

6 An action properly could have been brought in a proposed transferee court if:  
 7 (i) that court has subject matter jurisdiction, (ii) venue is proper in that court, and  
 8 (iii) defendants are subject to personal jurisdiction there. *See, e.g., Mardones*, 2018  
 9 WL 1363488 at \*3 (finding that action “originally could have been brought in the  
 10 [S.D.N.Y.]”). Here, all three criteria readily are satisfied.

11 *First*, the S.D.N.Y. plainly has subject matter jurisdiction over Plaintiff’s  
 12 claims based on federal question jurisdiction. Plaintiff has asserted multiple causes  
 13 of action under the TVPA, a federal statute. *See* 28 U.S.C. § 1331; [Compl. ¶¶ 39-  
 14 72].

15 *Second*, venue is proper in the S.D.N.Y., as the Complaint alleges that TWC  
 16 is headquartered in New York [Compl. ¶ 2] and that Mr. Weinstein and Harvey  
 17 Weinstein live there [*id.* ¶¶ 3-4]. *See* 28 U.S.C. § 1391(b)(1); *see also Luna*, 2018  
 18 WL 3569357, at \*2 (“[U]nder 28 U.S.C. § 1391(b)(1), venue is proper in any  
 19 judicial district in which a defendant resides.”).

20 *Third*, based on the allegations in the Complaint regarding their respective  
 21 domiciles and corporate headquarters [Compl. ¶¶ 2-4], all Defendants are subject to  
 22 personal jurisdiction in the S.D.N.Y. Indeed, Plaintiff’s counsel brought the  
 23 virtually identical *Noble* case in the S.D.N.Y. and no Defendant challenged personal

24  
 25 <sup>2</sup> Section 1404(a) affords district courts with broad discretion to transfer a case to another district.  
 26 *See, e.g., CFTC v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979) (“Weighing of factors for and  
 27 against transfer involves subtle considerations and is best left to the discretion of the trial judge.”).  
 28 Moreover, district courts must adjudicate motions to transfer “according to an ‘individualized,  
 case-by-case consideration of convenience and fairness.’” *Jones v. GNC Franchising, Inc.*, 211  
 F.3d 495, 498 (9th Cir. 2000) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

jurisdiction. Thus, this action could have been brought in the S.D.N.Y.

## 2. The Interests of Convenience and Justice Support Transfer.

Next, in considering whether the various factors weigh in favor of transfer, courts in this Circuit consider “the convenience of the parties and the witnesses ... the most important factors.” *Luna*, 2018 WL 3569357, at \*2; see *Denver & Rio Grande W. R.R. Co. v. Brotherhood of R.R. Trainmen*, 387 U.S. 556, 560 (1967) (“[V]enue is primarily a matter of convenience of litigants and witnesses.”). Here, the convenience of both the parties and the witnesses weighs strongly in favor of transfer, as do the other factors this Court may consider in deciding this motion.

### a. **Transfer to the S.D.N.Y. Would Be More Convenient for the Parties and Witnesses.**

This is not a case where “the effect of transfer would be to simply shift the inconvenience from one party to another,” *Luna*, 2018 WL 3569357, at \*4 (quoting *Plascencia v. Lending 1st Mortgage*, No. C 07-4485 CW, 2008 WL 1902698, at \*9 (N.D. Cal. Apr. 28, 2008)); rather, *all* parties and likely all witnesses in this case are located in or near the S.D.N.Y., making that district plainly more convenient than this forum.

As alleged in the Complaint, Plaintiff is a resident of New York,<sup>3</sup> TWC has its principal place of business in New York, and Mr. Weinstein and Harvey Weinstein are residents of New York and worked for TWC there. [Compl. ¶¶ 1-4.]<sup>4</sup> Thus, the

<sup>3</sup> At the August 20, 2018 status conference before the Court, Plaintiff’s counsel represented that—contrary to the allegation in her Complaint—Plaintiff resides in California. Mr. Weinstein’s counsel subsequently spoke with a more senior lawyer at Plaintiff’s law firm, who advised us that, to his knowledge, Plaintiff remains a resident of New York. Accordingly, it is Mr. Weinstein’s understanding that Plaintiff is still a New York resident.

<sup>4</sup> Moreover, in setting conditions for Harvey Weinstein’s release on bail in a criminal case pending against him, a New York court has prohibited Harvey Weinstein from leaving New York or Connecticut. See Benjamin Mueller & Alan Feuer, *Arrested on Rape Charges, Weinstein Posts \$1 Million Bail*, N.Y. Times (May 25, 2018), <https://www.nytimes.com/2018/05/25/nyregion/harvey-weinstein-arrested.html>. At the very least, Harvey Weinstein’s travel restrictions would cause

DANIELS, FINE, ISRAEL, SCHONBUCH & LEBOVITS, LLP  
1801 CENTURY PARK EAST, NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE (310) 556-7900  
FACSIMILE (310) 556-2807

1 S.D.N.Y. is a more convenient forum for *all* parties, including Plaintiff.

2 Given the Complaint's vague allegations regarding other TWC employees  
3 who purportedly knew about Harvey Weinstein's alleged sexual misconduct, to the  
4 extent there are relevant *non-party* witnesses, they likely would be former TWC  
5 employees, who presumably will be in or around New York. Although Plaintiff  
6 alleges she was assaulted by Harvey Weinstein in a Beverly Hills hotel, the  
7 Complaint does not make any allegations suggesting the existence of any non-party  
8 witnesses to the assault or any other witnesses located in California.

9 Thus, there can be no reasonable dispute that not only would the S.D.N.Y. be  
10 a more convenient forum for the parties and witnesses to this action, but a transfer to  
11 that district also would result in a significant reduction in legal expenses, as the  
12 parties would no longer need local counsel and would not have to travel for court  
13 appearances. *See, e.g., Lodestar Anstalt v. Bacardi & Co.*, No. 2:16-cv-06411-CAS-  
14 FFM, 2017 WL 1434265, at \*2, \*5 (C.D. Cal. Apr. 21, 2017) (finding convenience  
15 of witnesses and cost of litigation factors weighed in favor of transfer and  
16 explaining that "litigation costs are reduced when venue is located near the most  
17 witnesses expected to testify") (quoting *Park v. Dole Fresh Vegetables, Inc.*, 964 F.  
18 Supp. 2d 1088, 1095 (N.D. Cal. 2013)).<sup>5</sup> In short, the "most important" factors—the  
19 convenience of parties and witnesses—tilt heavily in favor of transfer.

20  
21  
22  
23 unnecessary delay and waste judicial resources, all of which would be avoided if this action is  
24 transferred to the S.D.N.Y.

25 <sup>5</sup> Relatedly, "the ease of access to evidence can be an important factor in deciding whether to grant  
26 a motion to transfer." *Sloan v. Pfizer, Inc.*, No. C 08-1849, 2008 WL 4167083, at \*5 (N.D. Cal.  
27 Sept. 8, 2008); *see also Mardones*, 2018 WL 1363488 at \*5 (that more documentary evidence was  
28 located in transferee district weighed in favor of transfer). Here, given the allegations in the  
Complaint, any document discovery likely would focus on the records of TWC and the other  
Defendants—most (if not all) of which is located in New York.

**b. Judicial Economy and the Interests of Justice Weigh in Favor of Transfer to the S.D.N.Y.**

“[J]udicial economy also supports the transfer of cases to a court that has dealt with the same major issues in other cases.” 15 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3854 & n.7 (4th ed. 2013) (collecting cases); see *Synopsys, Inc. v. Mentor Graphics Corp.*, No. C 12-5025 MMC, 2013 WL 1365946, at \*7 (N.D. Cal. Apr. 3, 2013) (granting transfer motion where, among other things, “[t]he District of Oregon has already familiarized itself with issues common to both the Oregon actions and the instant action”); see also *Mardones*, 2018 WL 1363488, at \*6 (“The copendency of a closely related litigation in a nearby forum [New York Supreme Court] suggests that transfer of this action to the Southern District of New York may permit a more efficient resolution of the parties’ dispute, and it should ease some of the burdens of litigation in this case.”). Here, not only the nearly identical *Noble* action, but four other actions seeking redress for Harvey Weinstein’s alleged misconduct against the same Defendants as here (among others) are all pending in the S.D.N.Y.<sup>6</sup>

There can be no reasonable dispute that the S.D.N.Y.—the home district of TWC, the company at the center of all Harvey Weinstein-related litigation—has the greatest interest in adjudicating issues relating to the conduct of TWC and its employees. And judges in that district have been doing precisely that. As discussed above, Judge Sweet, in the *Noble* action, already has decided motions to dismiss TVPA claims identical to those at issue here. Additionally, Judge Paul Engelmayer—presiding over another Harvey Weinstein-related case, captioned *Canosa v. Ziff*, No. 1:18-cv-04115-PAE—recently indicated that he plans to work with the other S.D.N.Y. judges adjudicating Weinstein-related matters to make sure

<sup>6</sup> *Canosa v. Ziff*, No. 1:18-cv-04115-PAE; *Geiss v. The Weinstein Co. Holdings, LLC*, No. 1:17-cv-09554 (AKH); *Doe v. The Weinstein Co. LLC*, No. 1:18-cv-05414; and *Dulany v. Miramax Film NY, LLC*, No. 1:18-cv-4857 (AKH).

DANIELS, FINE, ISRAEL, SCHONBUCH & LEBOVITS, LLP  
 1801 CENTURY PARK EAST, NINTH FLOOR  
 LOS ANGELES, CALIFORNIA 90067  
 TELEPHONE (310) 556-7900  
 FACSIMILE (310) 556-2807

the various cases are being “managed efficiently.” [*Canosa*, July 25, 2018 Oral Argument Tr. at 11-12.]<sup>7</sup>

While some deference is owed to a plaintiff’s choice of forum, “[w]here a plaintiff does not reside in the forum, the Court may afford his choice considerably less weight.” *Young v. Wells Fargo & Co.*, No. C 08-3735 SI, 2008 WL 5245894, at \*3 (N.D. Cal. Dec. 17, 2008) (granting motion to transfer); *see also* Wright & Miller, *supra*, § 3848 n. 17 (collecting cases). Given that Plaintiff resides in New York, little deference should be given to her decision to file suit here. That choice is far outweighed by the convenience of the parties and the interests of justice, which overwhelmingly favor transfer to New York.

#### IV. CONCLUSION

For the reasons set forth above, Mr. Weinstein respectfully requests that this Court grant his Motion to Transfer Venue.

Date: September 14, 2018

DANIELS, FINE, ISRAEL,  
SCHONBUCH & LEBOVITS, LLP

By: \_\_\_\_\_



Paul R. Fine

Bernadette C. Brouses

SCHULTE ROTH & ZABEL LLP

Gary Stein

Brian T. Kohn

Attorneys For Defendant Robert Weinstein

<sup>7</sup> A copy of that transcript was filed in the bankruptcy proceedings relating to TWC. *See In re Weinstein Co. Holdings, LLC, et al.*, No. 18-10601-MFW (Bankr. D. Del.), at Dkt. No. 1368-4.

**PROOF OF SERVICE**

State of California }  
County of Los Angeles }

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 1801 Century Park East, Ninth Floor, Los Angeles, California 90067. On September 14, 2018, I served the within document(s):

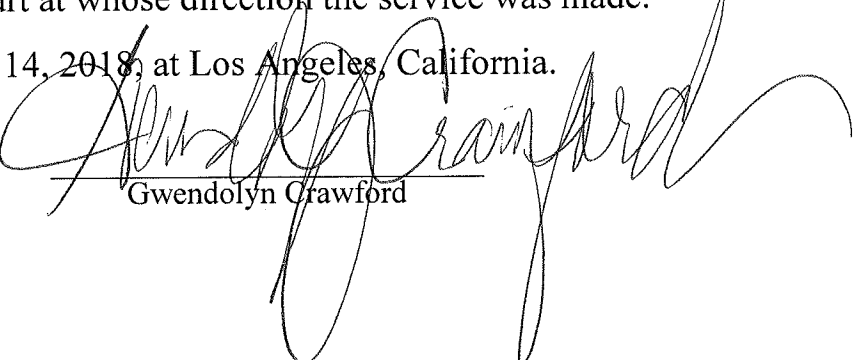
**DEFENDANT ROBERT WEINSTEIN'S NOTICE OF MOTION AND  
MOTION TO TRANSFER VENUE; AND MEMORANDUM OF POINTS  
AND AUTHORITIES**

by placing a true copy thereof in sealed envelopes as stated on the attached mailing list.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed on the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 14, 2018, at Los Angeles, California.

  
\_\_\_\_\_  
Gwendolyn Crawford

DANIELS, FINE, ISRAEL & SCHONBUCH, LLP  
1801 CENTURY PARK EAST, NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE (310) 556-7900  
FACSIMILE (310) 556-2807



**SERVICE LIST**

1 Daniel G. Ellis, Esq.  
2 Jeffrey M. Herman (*subject to application*  
3 *and admission pro hac vice*)  
4 HERMAN LAW  
5 5200 Town Center Cir. Suite 540  
6 Boca Raton, FL 33486  
7 Tel: 305.931.2200  
8 Fax: 305.931.0877  
9 Email: dellis@hermanlaw.com

6 ***Attorneys for Plaintiff DOMINIQUE HUETT***

7 Gary Stein, Esq.  
8 Brian Kohn, Esq.  
9 SCHULTE ROTH & ZABEL LLP  
10 (*subject to application*  
11 *and admission pro hac vice*)  
12 919 Third Avenue  
13 New York, NY 10022  
14 Tel: 212.756.2000  
15 Fax: 212.593.5955  
16 Email: gary.stein@srz.com  
17 brian.kohn@srz.com

13 ***Attorneys for Defendant ROBERT WEINSTEIN (erroneously sued as Bob***  
14 ***Weinstein)***